



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MORRISON & FOERSTER LLP
3811 VALLEY CENTRE DRIVE
SUITE 500
SAN DIEGO CA 92130-2332

COPY MAILED

SEP 21 2005

In re Reissue Application of:
Monsonov et al.
Reissue Application No. 09/023,232
Filed: February 13, 1998
Original Patent No. 5,569,812
Issue Date: October 29, 1996
For: NUDE MOUSE MODEL FOR HUMAN
NEOPLASTIC DISEASE

OFFICE OF PETITIONS

:
:
:
:
:
: DECISION DISMISSING PETITION
:
:
:

This is a decision on the petition filed April 20, 2005, styled as being filed under 37 C FR 1.47(b), which is properly treated as a petition under 37 CFR 1.183 seeking waiver of the rules and acceptance of the reply in the absence of a supplemental reissue declaration as the signature of both joint inventors cannot be obtained.

The petition is **dismissed**, but subject to favorable reconsideration if promptly renewed as indicated in more detail below.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. FAILURE TO RESPOND WILL RESULT IN THE ABANDONMENT OF THIS APPLICATION. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.183."

Rule 47 only applies where the initial signature of an originally named or to be added, inventor cannot be obtained. As both Monsonov and Fu executed an original joint reissue declaration and thus "made" this application, 37 CFR 1.47 did not then, and does not now, apply to this application. See MPEP 201.03. Rather, since both Monsonov and Fu have signed the original reissue declaration, the remedy for a demonstrated inability to obtain their signatures on a required supplemental declaration may lie under 37 CFR 1.183. See MPEP 603. As the petition establishes that notwithstanding diligent effort, neither of the joint inventors' signatures could be obtained for the instant supplemental declaration, justice would be served by waiver of the rules.

However, the Office is only willing to waive the signature requirements of both Monsonov and Fu on the required supplemental declaration; the Office is not willing to waive the requirement for a supplemental reissue declaration. That is, a supplemental reissue declaration under 37 CFR

1.175(b) was specifically required by the Office action of November 16, 2004, and this cannot be waived. However, while someone must execute the forthcoming required supplemental reissue declaration, it need not be executed by either or both of the named inventors.

That is, in a manner analogous to that of a petition under 37 CFR 1.47(b), where not one named inventor will sign the necessary declaration, the forthcoming supplemental declaration for this application may be signed by an officer of the assignee (with any necessary averments being stated as based on information and belief), or by counsel of record, if empowered *ad hoc* by the assignee, may make the necessary statements and state that counsel is, in this instance empowered by the assignee to make the necessary averments on behalf of the assignee. Since, as noted above, both Monsonov and Fu have already executed the reissue oath or declaration, this application still has no Rule 47 status and further, will still not be regarded as an assignee-filed reissue application.

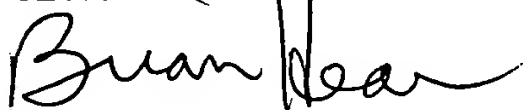
Any forthcoming renewed petition should be addressed as follows:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Randolph Building 401 Dulany Street
 Alexandria, VA 22314:

By fax: (703) 872-9306
 ATTN: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3217.


Brian Hearn
Petitions Examiner
Office of Petitions